

**STATE OF MICHIGAN**  
**DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**  
**XXXXXX**

**Petitioner**

**File No. 121004-001**

**v**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

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**Issued and entered**  
**this 17<sup>th</sup> day of October 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On April 28, 2011 XXXXX, on behalf of her minor son XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner reviewed the material submitted and accepted the request on May 6, 2011. The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review, and requested the information it used in making its adverse determination. The Commissioner received BCBSM's response on May 27, 2011.

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

The Petitioner receives health care benefits as a dependent of his mother's coverage through

the Michigan Education Special Services Association (MESSA). The coverage is underwritten and administered by BCBSM. Benefits are defined in the *MESSA Choices Group Insurance for School Employees* (the booklet).

The Petitioner, born XXXXX, was diagnosed with a swallowing disorder (dysphagia). His pediatrician recommended Simply Thick® be added to breast milk for his feedings to improve his ability to swallow the breast milk without aspirating it into his lungs. Petitioner's mother and Petitioner's pediatrician requested BCBSM cover the costs for Simply Thick®. BCBSM denied coverage stating Simply Thick® is not a benefit under your contract.

The Petitioner's mother appealed BCBSM's denial. After a managerial-level conference on April 1, 2011, BCBSM did not change its decision and issued a final adverse determination dated April 12, 2011.

### **III. ISSUE**

Is BCBSM required to cover the cost for the Petitioner's use of Simply Thick® thickening agent?

### **IV. ANALYSIS**

#### **Petitioner's Argument**

Petitioner's mother says prior to him being diagnosed with a swallowing disorder:

[H]e would be gurgly, nasly and sound sick because he would constantly cough. Because of this I would take him to and call his doctor's office numerous times because he sounded like he had fluid in his lungs or had a nasty cold. During feedings [Petitioner] would always choke and gag, arch his back, scream and didn't want to eat.

She said at this time, his only source of nutrition was breast milk and it was too thin for Petitioner to swallow without aspiration. It was determined the only way for him to be fed was to add Simply Thick® to improve his ability to swallow without aspiration into his lungs. Since she began adding Simply Thick® to his bottle, he is able to eat without any difficulty. Simply Thick® is available without a prescription.

In support of the request for Simply Thick®, Petitioner's pediatrician in a letter to MESSA wrote:

I am requesting that [Petitioner] receive special exception for a product called Simply Thick - honey thickener. He has been diagnosed with a swallowing

disorder in which regular formula or breast milk is too thin and as a result he is shunting this into his lungs (also known as aspiration). Because of this impaired ability to swallow he is at risk for aspiration pneumonia or SIDS. Per the swallow study (we can send if you would like) he is added to his breast milk. This product is generally not covered by most insurances but is literally lifesaving for the infants suffering from this swallowing defect. Most babies outgrow this problem between 9-12 months and subsequently are no longer at risk for aspiration as a result of their muscles developing better as they age including those muscles responsible for swallowing so I do not suspect [Petitioner] will need this long term but likely he will in the 1<sup>st</sup> year of life. He will have repeated swallow studies to see when he has outgrown this condition so we can monitor if simply Thick will even continue to be necessary.

#### BCBSM's Argument

In its final adverse determination dated April 12, 2011 BCBSM denied coverage for Simply Thick® thickener because "it is not a benefit under your contract."

While this category can include special formulas and foods for certain medical conditions, simply thick is neither a formula nor food. Rather, it is a thickening agent. While we do not question that it is beneficial for [Petitioner], Simply Thick® does not meet the criteria of a medical supply. Therefore, no payment can be made.

BCBSM maintains that its denial was appropriate under the terms of the booklet.

#### Commissioner's Review

Under the *MESSA Choices Group Insurance for School Employees* booklet provides:

##### **Section 7: Other Covered Health Care Services**

##### **Medical Supplies**

We pay for medical supplies and dressings to be used in your home for the treatment of a specific medical condition.

The Commissioner notes, nothing in the booklet indicates that thickeners are a covered benefit even though specially prepared to meet a medical need. They simply are not a medical supply. The Commissioner therefore finds BCBSM's denial of the thickener is consistent with the terms of the booklet.

## **V. ORDER**

Respondent Blue Cross Blue Shield of Michigan's June 30, 2010, final adverse determination is upheld. BCBSM is not required to cover the cost of Simply Thick® for the Petitioner.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.